

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Pacific Wireless Technologies, Inc.)	CC Docket No. 94-102
Request for Waiver of Rule 20.18)	
)	

Directed to: Chief, Wireless Telecommunications Bureau

REQUEST FOR TEMPORARY WAIVER

Pacific Wireless Technologies, Inc. ("Pacific"), by its attorneys and pursuant to the provisions of section 1.925 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission), 47 C.F.R. § 1.925 (1999), hereby requests a temporary waiver of the provisions of section 20.18(e) of the FCC's rules (the "Rule"), which otherwise requires certain commercial mobile radio service providers to offer Phase II enhanced 9-1-1 ("E911") services, including automatic location information ("ALI"), generally commencing on October 1, 2001.^{1/} As set forth more fully below, issuance of a waiver to Pacific will serve the public interest.

^{1/} Because it is considered a feeable request, the original-signature version of this request for waiver has been submitted to the FCC's Mellon Bank "lockbox."

I.

BACKGROUND.

A. Pacific.

Pacific is an 800 MHz Specialized Mobile Radio ("SMR") licensee that provides CMRS services in the state of California. Pacific recently sought FCC approval to assign most of its FCC licensed-assets to a subsidiary of Nextel Communications, Inc. ("Nextel"). See ULS File No. 0000523796 (filed July 27, 2001). When the transaction is completed, Pacific will no longer offer wireless communications services that implicate the Rule.

B. The Rule.

The Rule, as noted above, generally requires certain CMRS licensees to commence E911-ALI services on or before October 1, 2001. The wireless industry -- which serves many millions of end users -- is currently attempting to meet this FCC-imposed deadline.^{2/} However, nearly every major wireless carrier has indicated that it will be unable to conform to the precise requirements of the Rule.^{3/}

^{2/} The Rule is not intended to implement any particular statutory directive relating to location technology. The Rule is merely the FCC's mandate that certain wireless carriers increase the sophistication of their networks to promote public safety. At the time the Rule was adopted, the FCC established implementation deadlines based on predictive judgments about the future pace of technological developments. *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order*, 11 FCC Rcd 18676, ¶ 9 (1996) ("As technology leads to the development of cost effective location systems that can improve upon the accuracy and reliability standards we are adopting, we must ensure that reasonable requirements and incentives are in place to facilitate the application of this technology to improve wireless 911 services."). Thus, compared to other regulatory mandates where compliance can be accomplished with certainty, there has been an increased need for the issuance of waivers associated with this obligation.

^{3/} Waiver requests have been submitted by Sprint PCS, Cingular, Verizon, Nextel and AT&T Wireless Services, among others. If these larger, nationwide carriers find compliance with the FCC's E911-ALI implementation deadline problematical, smaller carriers such as Pacific are even more challenged.

Nextel submitted a request for waiver of the Rule on November 9, 2000. Pacific submitted comments and reply comments in that waiver proceeding,^{4/} urging the FCC to extend whatever relief it offered to Nextel to all similarly-situated iDEN carriers.^{5/} The FCC has not yet acted on Nextel's request for waiver.

II.

DISCUSSION.

A. Waiver Criteria.

Section 1.925 of the FCC's rules states that the FCC will issue a waiver where the applicant can show either that:

- (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

47 C.F.R. § 1.925(b)(3) (1999). Rule 1.925 does not change prior FCC law, which alternatively permits a waiver where "good cause" is shown. 47 C.F.R. § 1.3 (1999); see also *GTE Wireless of the Pacific, Inc.*, DA 00-1525, ¶ 3, rel. July 6, 2000. The U.S. Court of Appeals for the D.C. Circuit has noted that the Commission's discretion to resolve difficult issues with general rules is intimately linked to the existence of a "safety valve" procedure for granting an exemption based

^{4/} *Public Notice* No. DA 00-2704, rel. December 4, 2000.

^{5/} At the time, Pacific and Nextel had not entered into any agreement for sale of Pacific's assets to Nextel. Pacific's support of Nextel's request for waiver was merely based on Pacific's intended use of the same Motorola-provided Assisted GPS technology. Pacific described its proposed use of AGPS technology in its November 9, 2000 E911 Implementation Report, filed in CC Docket No. 94-102. Therein, Pacific stated that AGPS technology would not be available until 4Q02, well after its transaction with Nextel will be concluded.

on special circumstances. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969, cert. denied, 409 U.S. 1027 (1972)).

The Commission also recently specified waiver criteria that are directly applicable to E911-ALI related requests for waiver. See *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, ¶¶ 42-45 (2000). However, those criteria were generally adopted for licensees that cannot comply with the Rule due to technical reasons. This request for waiver is premised instead on the unique circumstances associated with Pacific's pending transaction.

B. Application of Waiver Criteria.

Pacific seeks waiver under the second alternative test established by rule section 1.925. In particular, Pacific demonstrates herein that in light of the unique circumstances present in this case, application of the Rule would be unduly burdensome or contrary to the public interest.

(i) The Waiver Request Is Temporary.

As noted above, Pacific and Nextel jointly sought FCC consent for the assignment of most of Pacific's licenses to a Nextel subsidiary on July 27, 2001. Pacific is hopeful that the application seeking FCC consent to the assignment of those licenses will be processed in a manner consistent with the Wireless Telecommunications Bureau's ("Bureau") customer service standards,^{6/} and that it will be granted by the Rule's October 1, 2001 deadline. Even if the FCC acts in this expeditious fashion, it is likely that consummation of the transaction between Pacific and Nextel will not occur until after October 1, 2001. Moreover, if the FCC does not consent to the assignment of the Pacific licenses to Nextel's subsidiary until after October 1, 2001,

^{6/} See <http://www.fcc.gov/wtb/csinfo/custsvc.html> ("We will process uncontested license applications not requiring international coordination issued by the Bureau within 31 working days of the first legally grantable day.").

consummation of the transaction will not occur until even later. Accordingly, there will likely be a period of time after October 1, 2001, that Pacific and Nextel will not yet have closed their transaction and Pacific would otherwise be subject to the Rule. After closing, Pacific's customers will become Nextel's customers, and enjoy the benefits of those safety and service features Nextel offers to its end users. However, subjecting Pacific to the requirements of the Rule is unduly burdensome and contrary to the public interest because there will likely only be a short period of time during which the Rule even applies to Pacific. Because there is almost universal agreement in the wireless industry that no providers will be offering E911-ALI compliant services during the brief time period between October 1, 2001 and the time that Pacific and Nextel will likely close their transaction, Pacific's end users will not suffer any degraded safety services based on the issuance of the requested waiver.^{7/}

(ii) FCC Precedent Supports The Issuance Of A Waiver.

The Commission recently addressed the issue of compliance with its service rules in a case where the FCC licensee subject to compliance would clearly no longer remain the FCC licensee as soon as the Commission processed applications for assignment that were then pending. See *Geotek Communications, Inc.* ("Geotek"), 14 FCC Rcd 18860, ¶ 6 (1999). In that case, the Commission stated:

Because Geotek . . . has filed assignment applications which are currently pending, it is unlikely that Geotek will ultimately be the licensee responsible for complying with the construction requirements. . . . Furthermore, the [proposed assignees] have filed a request for a waiver In light of the fact that . . . the assignment applications remain pending, and the Commission has not acted on the [proposed assignees'] waiver request, we believe it would serve the public interest to grant Geotek and [the proposed assignees] an extension of the deadline

^{7/} In fact, carriers that opt for handset-based E911-ALI approaches will not be required under the Rule to immediately provide E911-ALI to all their end users. The FCC's Rule permits a phased-in approach that commences with new activations.

Geotek at ¶ 6.

This case is not materially different. Similar to the situation in *Geotek*, it is clear that Pacific will soon no longer be an FCC licensee subject to the Rule. Further, Nextel, like the proposed assignees in the *Geotek* case, has independently sought a request for waiver of the Rule. Thus, as it did in *Geotek*, the Commission should find that the instant situation presents unique circumstances falling under the second alternative waiver test contained in the FCC's regulations.^{8/}

III.

CONCLUSION.

WHEREFORE, THE FOREGOING PREMISES CONSIDERED, Pacific respectfully requests that the FCC waive the provisions of section 20.18(e) of its regulations.

Respectfully submitted,

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August 8, 2001

^{8/} In light of the immediacy of the October 1, 2001 deadline, if the FCC denies this request, Pacific asks that the FCC waive the requirements of the Rule for six (6) months following its decision in order for Pacific to either attempt to comply with the Rule or seek a waiver based on the first waiver test contained in the FCC's rules.